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## REMARKS

To avoid fees, the nonelected claims 14, 15 and 31 (drawn to methods of purifying foodstuffs) are cancelled, and right is reserved to file them and the previously nonelected claims (1-9 and 17-21) in a separate application or applications.

For convenient reference, pages 2 and following of the Office Action are set forth below in italics.

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*DETAILED ACTION*

*Upon consideration of the new claims, amendment of the pending claims, and the correction of the dependency of claims 29 and 30, submitted in the amendment dated 9/24/2007, further restriction of the claims is required.*

*Election/Restrictions*

*Restriction to one of the following inventions is required under 35 U.S.C. 121:*

*I. Claims 10-13, 16, 22-25, 29-30, 32, 34-37, 38- drawn to methods of purifying or separating DNA or RNA compounds from celllysates or enzymes, classified in class 435, subclass 288.6.*

*II. Claims 14, 15, and 31, drawn to methods of purifying food stuffs, classified in class 426, subclass 271.*

*The inventions are distinct, each from the other because of the following reasons:*

*Inventions I and II are unrelated. Inventions are unrelated if it can be shown that they are not disclosed as capable of use together and they have different designs, modes of operation, and effects (MPEP § 802.01 and § 806.06). In the instant case, the different inventions have different modes of operation, functions, and effects. The starting material for Group I is distinct from that of Group II, i.e. most, if not all, celllysates and enzymes cannot be considered food stuffs.*

*Furthermore, the methods of Group I recite method steps not found in Group II, i.e. the collection or elution of a DNA or RNA target compound. Such methods are at cross purposes to the methods of Group II wherein the target is a purified food stuff, i.e. any non-shielded nucleic acids are not purified, collected or eluted in the methods of Group II.*

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*Restriction for examination purposes as indicated is proper because all these inventions listed in this action are independent or distinct for the reasons given above and there would be a serious search and examination burden if restriction were not required because one or more of the following reasons apply:*

*(a) the inventions have acquired a separate status in the art in view of their different classification;*

*(b) the inventions have acquired a separate status in the art due to their recognized divergent subject matter;*

*(c) the inventions require a different field of search (for example, searching different classes/subclasses or electronic resources, or employing different search queries);*

*(d) the prior art applicable to one invention would not likely be applicable to another invention.*

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(e) the inventions are likely to raise different non-prior art issues under 35 U.S.C. 101 and/or 35 U.S.C. 112, first paragraph.

Applicant is advised that the reply to this requirement to be complete must include (i) an election of an invention to be examined even though the requirement may be traversed (37 CFR 1.143) and (ii) identification of the claims encompassing the elected invention. The election of an invention may be made with or without traverse. To reserve a right to petition, the election must be made with traverse. If the reply does not distinctly and specifically point out supposed errors in the restriction requirement, the election shall be treated as an election without traverse. Traversal must be presented at the time of election in order to be considered timely. Failure to timely traverse the requirement will result in the loss of right to

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petition under 37 CFR 1.144. If claims are added after the election, applicant must indicate which of these claims are readable on the elected invention.

If claims are added after the election, applicant must indicate which of these claims are readable upon the elected invention.

Should applicant traverse on the ground that the inventions are not patentably distinct, applicant should submit evidence or identify such evidence now of record showing the inventions to be obvious variants or clearly admit on the record that this is the case. In either instance, if the examiner finds one of the inventions unpatentable over the prior art, the evidence or admission may be used in a rejection under 35 U.S.C. 103(a) of the other invention.

Applicants hereby elect without Traverse: Invention [Group] I drawn to Invention I consisting of Claims 10-13, 16,22-25,29-30,32,34-37,38- drawn to methods of purifying or separating DNA or RNA compounds from celllysates or enzymes, classified in class 435, subclass 288.6.

This application contains claims directed to the following patentably distinct species: Species I, the type of DNA or RNA present in the mixture and intended to be the target compound, e.g. DNA, poly(A) RNA, denatured nucleic acid sequences, as recited in claims 29, 30,34,38, and 41; Species II, the type of ligand, as recited in claim 44. The species are independent or distinct because claims to the different species recite the mutually exclusive characteristics of such species. In addition, these species are not obvious variants of each other based on the current record.

Applicant is required under 35 U.S.C. 121 to elect a single disclosed species for prosecution on the merits to which the claims shall be restricted if no generic claim is finally held to be allowable. Currently, claims 10-16,22-25,31,32,35-37,39,40 and 42-44 are generic for Species I, and claims 10-16,22-25,29-32,34-37,38-43 are generic for Species II.

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There is an examination and search burden for these patentably distinct species due to their mutually exclusive characteristics. The species require a different field of search (e.g., searching different classes/subclasses or electronic resources, or employing different search queries); and/or the prior art applicable to one species would not likely be applicable to another species; and/or the species are likely to raise different non-prior art issues under 35 U.S.C. 101 and/or 35 U.S.C. 112, first paragraph.

Applicant is advised that the reply to this requirement to be complete must include (i) an election of a species to be examined even though the requirement may be traversed (37CFR 1.143) and (ii) identification of the claims encompassing the elected species, including any claims subsequently added. An argument that a claim is allowable or that all claims are generic is considered nonresponsive unless accompanied by an election. The election of the species may be made with or without traverse. To preserve a right to petition, the election must be made with traverse. If the reply does not distinctly and specifically point out supposed errors in the election of species requirement, the election shall be treated as an election without traverse. Traversal must be presented at the time of election in order to be considered timely. Failure to timely traverse the requirement will result in the loss of right to petition under 37 CFR 1.144. If claims are added after the election, applicant must indicate which of these claims are readable on the elected species.

Should applicant traverse on the ground that the species are not patentably distinct, applicant should submit evidence or identify such evidence now of record showing the species to be obvious variants or clearly admit on the record that this is the case. In either instance, if the

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examiner finds one of the species unpatentable over the prior art, the evidence or admission may be used in a rejection under 35 U.S.C. 103(a) of the other species. Upon the allowance of a generic claim, applicant will be entitled to consideration of claims to additional species which depend from or otherwise require all the limitations of an allowable generic claim as provided by 37 CFR 1.141.

Restriction for examination purposes as indicated is proper because all these inventions listed in this action are independent or distinct for the reasons given above and there would be a serious search and examination burden if restriction were not required because one or more of the following reasons apply:

(a) the inventions have acquired a separate status in the art in view of their different classification;

(b) the inventions have acquired a separate status in the art due to their recognized divergent subject matter;

(c) the inventions require a different field of search (for example, searching different classes/subclasses or electronic resources, or employing different search queries);

(d) the prior art applicable to one invention would not likely be applicable to another invention;

(e) the inventions are likely to raise different non-prior art issues under 35 U.S.C. 101 and/or 35 U.S.C. 112, first paragraph.

Applicant is advised that the reply to this requirement to be complete must include (i) an election of a invention to be examined even though the requirement may be traversed (37CFR 1.143) and (ii) identification of the claims encompassing the elected invention.

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The election of an invention may be made with or without traverse. To reserve a right to petition, the election must be made with traverse. If the reply does not distinctly and specifically point out supposed errors in the restriction requirement, the election shall be treated as an election without traverse. Traversal must be presented at the time of election in order to be considered timely. Failure to timely traverse the requirement will result in the loss of right to petition under 37 CFR 1.144. If claims are added after the election, applicant must indicate which of these claims are readable on the elected invention.

Applicants hereby elect without traverse Species I, the type of DNA or RNA present in the mixture and intended to be the target compound, e.g. DNA,

poly(A) RNA, denatured nucleic acid sequences, as recited in claims 29, 30, 34, 38, and 41; should no generic claim be found allowable.

Applicants reserve their right to file claims directed to Species II, the type of ligand, as recited in claim 44 in separate Applications, if needed.

*If claims are added after the election, applicant must indicate which of these claims are readable upon the elected invention.*

There are no newly added Claims.

*Should applicant traverse on the ground that the inventions are not patentably distinct, applicant should submit evidence or identify such evidence now of record showing the inventions to be obvious variants or clearly admit on the record that this is the case. In either instance, if the examiner finds one of the inventions unpatentable over the prior art, the evidence or admission may be used in a rejection under 35 U.S.C. 103(a) of the other invention.*

*Any inquiry concerning this communication or earlier communications from the examiner should be directed to Michael Burkhart whose telephone number is (571)272-2915.*

*The examiner can normally be reached on M-F 8AM-5PM.*

*If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Joseph Wolach can be reached on (571) 272-0739. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.*

*Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.*

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*/Michael Burkhart/ Primary Examiner, Art Unit 1633*

*Michael Burkhart Art Unit 1633*